

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

ROWLAND A. FABIAN,

Defendant.

Civil Action No. 2:02CV495RL

## CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein against the Defendant, Rowland A. Fabian (“Fabian”), alleging that Fabian violated Sections 301(a) and 301(d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1319(d);

WHEREAS, the Complaint alleges, in Count I (of II), that Fabian violated CWA Section 301(a) by discharging fill material, dredged material, and/or other pollutants into waters of the United States without authorization located on what this Consent Decree refers to as the “Site,” which is real property located between the southerly right-of-way of U.S. Highway 20 and the northwesterly boundary line of the Little Calumet River (also known as Burns Ditch) in the City of Lake Station, in Lake County, Indiana, and the City of Portage, in Portage County, Indiana, and more fully described at Appendix A to this Consent Decree;

WHEREAS, the Complaint alleges, in Count II (of II), that Fabian is liable for civil penalties under CWA Section 301(d) for violating one or more valid orders issued by EPA;

WHEREAS, the Complaint seeks the Court: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Fabian, at his own expense and at the direction of EPA, to restore and mitigate the damages caused by his unlawful activities; (3) to require Fabian to pay civil penalties as provided in 33 U.S.C. § 1319(d); and (4) to grant such further relief as this Court deems appropriate.

WHEREAS, in 2005, the United States filed a motion for summary judgment against Fabian;

WHEREAS, in 2007, this Court granted the United States' motion for summary judgment with regards to Fabian's liability under both counts of the Complaint, and the Court denied the motion with leave to re-file with regards to the United States' requests for injunctive relief and civil penalties, see United States v. Fabian, 522 F. Supp. 2d 1078 (N.D. Ind. 2007);

WHEREAS, during summary judgment proceedings, Fabian submitted evidence regarding the limits of his ability to pay to the United States and the Court, and after the Court's summary judgment Opinion and Order, Fabian submitted additional ability-to-pay evidence, as well as evidence concerning his physical and medical condition, to the United States;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of Counts I and II of the United States' Complaint, that is, all civil claims for injunctive relief and civil penalties alleged in the Complaint against Fabian under the CWA regarding his activities at the Site;

WHEREAS, the United States and Fabian agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims against Fabian in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' civil claims against Fabian in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, without taking further testimony or evidence, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of Indiana pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Site is located in this District and the activities for which the Court has found Fabian to be liable under the CWA occurred in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

## II. APPLICABILITY

4. The obligations of this Consent Decree, with the exception of the obligations set forth in paragraphs 27 through 32, shall apply to and be binding upon Fabian, his agents, employees and servants, and his successors, assigns, and descendants, and any person, firm, association or corporation who is, or will be, acting in concert or participation with Fabian whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against Fabian, Fabian shall not raise as a defense the failure of any of his agents, employees, successors, assigns, or descendants, or any person, firm or corporation acting in concert or participation with Fabian, to take any actions necessary to comply with the provisions hereof. The Rowland A. Fabian CWA Trust to be created under the provisions of this Consent Decree, and its trustee or other persons exercising control over its assets, shall not be considered Fabian's agents, employees, successors, assigns or persons acting in concert with Fabian for purposes of enforcement of this Consent Decree.

5. As set forth at Appendix B to this Consent Decree, Fabian's nephew, John L. Fabian, has been designated Fabian's true and lawful attorney-in-fact and authorized agent for the purpose of representing Fabian's interest in this case. Pursuant to Fed. R. Civ. P. 17(c), the parties stipulate, and the Court finds, that John L. Fabian may execute this Consent Decree on behalf of Fabian and thereby bind Fabian to the obligations of this Consent Decree. All further references in this Consent Decree to Fabian shall be construed to include John L. Fabian, not individually but solely in his capacity as the attorney-in-fact and authorized agent for Fabian.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against Fabian under the CWA regarding his activities at the Site.

7. Except as in accordance with this Consent Decree, Fabian shall not discharge any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

8. The parties acknowledge that Nationwide Permit 32 (72 Fed. Reg. 11,092, 11,187) authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent Decree.

9. This Consent Decree in no way affects or relieves Fabian of his responsibility to comply with any applicable federal, state, or local law, regulation or permit. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

11. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

12. [This paragraph is intentionally left blank.]

#### IV. SPECIFIC PROVISIONS

##### RELIEF

13. The United States and Fabian stipulate, and the Court finds and declares, that under CWA Section 309(b), 33 U.S.C. § 1319(b), the following injunctive relief is appropriate in this case: (1) restoration of the wetlands at the Site in a manner consistent with Appendix C to this Consent Decree or, where on-the-ground circumstances or cost considerations warrant deviations to that plan, to the satisfaction of EPA; (2) conveyance, to a non-profit entity of EPA's choosing, of a conservation easement encompassing that portion of the Site containing the restored wetlands, as well as approximately 10 acres of the Site generally referred to as the "southern third" and more specifically described as follows: the area commencing 75 feet south of the centerline of the NIPSCO tower lines and continuing to the southerly property line of Fabian's ownership of the Site, including Fabian's ownership to the old channel of the Little Calumet River on the southside of Little Calumet River (also known as Burns Ditch) in Lake County, Indiana, and the area south of the NIPSCO tower lines in Porter County, Indiana; and (3) off-site mitigation in the form of \$ 86,600.00 payable to a mitigation bank of EPA's choosing within the same watershed of the Site.

14. The United States and Fabian stipulate, and the Court finds and declares, that under CWA Section 309(d), 33 U.S.C. § 1319(d), a total civil penalty assessment in the amount

of \$ 3,400.00 is appropriate based on Fabian's ability-to-pay, his physical and medical condition, and other factors in this case.

#### FABIAN'S OBLIGATIONS

15. Fabian shall pay a civil penalty to the United States in the amount of \$ 3,400.00. Payment shall be made in accordance with instructions provided to Fabian by the United States. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

16. Fabian shall, in accordance with Indiana Code 30-4-2-19, create a trust for a noncharitable purpose without a beneficiary.

17. The trust shall be consistent with this Consent Decree and acceptable to the Trustee appointed in paragraph 23.

18. The trust shall be known as the "Rowland A. Fabian CWA Trust."

19. The purpose and intended use of the Rowland A. Fabian CWA Trust shall be to effectuate, to the maximum extent allowable by the value of the trust, the injunctive relief the Court has found and declared to be appropriate in paragraph 13.

20. Fabian shall irrevocably convey, by certified funds or quit-claim deed, the following properties to the Trustee of the Rowland A. Fabian CWA Trust: (1) \$10,000.00 in cash; (2) all interests of Fabian (and of all entities in which Fabian holds an equity interest of 50 percent or more, or which are otherwise under the control of Fabian, including but not limited to any and all land trusts in which Fabian and/or any of said entities hold a power of direction (e.g.,

Trust P-5456)) in and to the "Site," which is described in Appendix A to this Consent Decree; and (3) all interests of Fabian (and of all entities in which Fabian holds an equity interest of 50 percent or more, or which are otherwise under the control of Fabian, including but not limited to any and all land trusts in which Fabian and/or any of said entities hold a power of direction (e.g., Fabian Fabian Engineering, Club Nige, and Nige Inc.)) in and to the parcels of real estate situated in Lake County, Indiana and Porter County, Indiana, as listed in Appendix D to this Consent Decree.

21. Fabian shall satisfy the obligations of paragraphs 15 through 20 forthwith and in no event later than 30 days following entry of this Consent Decree, and Fabian shall promptly thereafter notify in writing the United States of such completion.

22. After Fabian satisfies the obligations of paragraphs 15 through 21, Fabian shall have no further obligations under this Consent Decree, except that: (1) Fabian shall refrain from discharging any pollutant into waters of the United States as stated in paragraph 7; (2) Fabian shall cooperate with the United States and the Trustee with respect to providing the Trustee with all property records, documents, and other information within Fabian's possession or control; and (3) Fabian shall, within 30 days of service of a written request by the United States and the Trustee, irrevocably convey by quit-claim deed to the Trustee of the Rowland A. Fabian CWA Trust all interests of Fabian (and of all entities in which Fabian holds an equity interest of 50 percent or more, or which are otherwise under the control of Fabian, including but not limited to any and all land trusts in which Fabian and/or any of said entities hold a power of direction) in and to the parcel(s) of real estate in Lake County, Indiana, that is legally described as Block L Yonan Airport and is marked with an "L" and shaded in horizontal stripes in Appendix E to this

Consent Decree, provided that the United States and the Trustee, within 90 days of entry of this Consent Decree, determine that said parcel(s) of real estate has value and use separate and apart from the parcel(s) of real estate that is legally described as Block J Yonan Airport and Lots 38, 39 & 40, 2nd Addition to Yonan Air-Park Homesites, and is marked with a "J" shaded in checkered design in Appendix E to this Consent Decree. Fabian shall cooperate with the United States and Trustee with respect to providing information and access to Block L Yonan Airport as necessary to enable the United States and the Trustee to determine timely whether said parcel(s) meets this criterion. In the absence of the United States and the Trustee making such demand for conveyance of Block L Yonan Airport within 90 days of entry of this Consent Decree, neither the United States nor the Trustee shall have any right to later demand that said parcel(s) be conveyed by Fabian under this Consent Decree to the Trustee of the Rowland A. Fabian CWA Trust.

ROWLAND A. FABIAN CWA TRUST'S ADMINISTRATION

23. With the consent and recommendation of the United States and Fabian, and her consent, the Court appoints Stacia L. Yoon, Esq., Genetos Retson Yoon & Molina LLP, 8585 Broadway, Suite 480, Merrillville, IN 46410, telephone (219) 755-0401, to be the Trustee of the Rowland A. Fabian CWA Trust. This appointment becomes effective upon entry of this Consent Decree and Fabian's execution of the trust instrument referenced in paragraph 17. Stacia L. Yoon signs and shall be subject to this Consent Decree only to the extent of her capacity as Trustee of the Rowland A. Fabian CWA Trust (when the term of said trust commences).

24. The Trustee shall administer the Rowland A. Fabian CWA Trust consistent with its purpose and intended use, this Consent Decree, the trust instrument referenced in paragraph 17, and the laws of the State of Indiana.

25. The Court must approve any removal or resignation of the Trustee, and the Court must approve any appointment of a successor Trustee.

26. Although the United States will not be a beneficiary of the Rowland A. Fabian CWA Trust and does not acquire any interest in real property as a result of this Consent Decree or trust instrument created by Fabian pursuant to paragraph 17, the United States may enforce the Rowland A. Fabian CWA Trust in the same manner that it may enforce this Consent Decree.

#### ROWLAND A. FABIAN CWA TRUST'S OBLIGATIONS

27. The Rowland A. Fabian CWA Trust shall restore the wetlands at the Site consistent with Appendix C to this Consent Decree or, where on-the-ground circumstances or cost considerations warrant deviation from that plan, to the satisfaction of EPA. In no event may EPA under this Consent Decree require more restoration at the Site than that set forth in Appendix C to this Consent Decree.

28. When the United States so directs, the Rowland A. Fabian CWA Trust shall convey, to a non-profit entity of EPA's choosing, a conservation easement encompassing that portion of the Site containing the restored wetlands, as well as approximately 10 acres of the Site generally referred to as the "southern third" and more specifically described in paragraph 13.

29. Within 15 days after the conveyance of the conservation easement referenced in paragraph 28, the Rowland A. Fabian CWA Trust shall record a certified copy of this Consent Decree with the Recorder of Deeds Office, in Lake and Porter Counties, Indiana. Thereafter,

each deed, title, or other instrument conveying an interest in the real property containing the conservation easement referenced in paragraph 28 shall contain a notice stating that the real property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

30. The Rowland A. Fabian CWA Trust shall pay \$ 86,600.00 to a mitigation bank of EPA's choosing within the same watershed of the Site. The Rowland A. Fabian CWA Trust shall make this payment in accordance with instructions provided to the Trustee by such mitigation bank or the United States.

31. The Rowland A. Fabian CWA Trust shall satisfy its obligations in the following priority: (1) satisfying the costs of administering the Rowland A. Fabian CWA Trust, including but not limited to federal and state income tax obligations, Trustee's compensation and reasonable costs, compensation of professionals retained by the Trustee, and administrative expenses, in accordance with the trust instrument referenced in paragraph 17; (2) satisfying the obligations of paragraphs 27 through 29; and (3) satisfying the obligation of paragraph 30. In the event that the value of the Rowland A. Fabian CWA Trust is not sufficient to satisfy the foregoing obligations in their entirety, the Trustee shall distribute the trust property in a manner consistent with the following priority and manner: (1) satisfying the costs of administering the Rowland A. Fabian CWA Trust in accordance with the trust instrument referenced in paragraph 17; (2) satisfying as much as possible the obligations of paragraphs 27 through 29; and (3) satisfying as much as possible the obligation of paragraph 30. In the event that the value of the Rowland A. Fabian CWA Trust exceeds the amount required to satisfy the costs of administering the Rowland A. Fabian CWA Trust in accordance with the trust instrument

referenced in paragraph 17, and to satisfy the obligations of paragraphs 27 through 30 in their entirety, the Trustee shall, after the foregoing obligations have been satisfied in their entirety, distribute any such surplus trust property to any person or entity designated by the Court, provided that no such surplus trust property be distributed to the United States.

32. The Rowland A. Fabian CWA Trust shall terminate upon termination of this Consent Decree under Section XIV.

V. RETENTION OF RECORDS AND RIGHT OF ENTRY

33. Until this Consent Decree terminates, the Rowland A. Fabian CWA Trust shall preserve and retain all records and documents in its possession or control or which come into its possession or control that relate in any manner to this Consent Decree. Until this Consent Decree terminates, the Rowland A. Fabian CWA Trust shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to this Consent Decree.

34. At the conclusion of the document retention period, the Rowland A. Fabian CWA Trust shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, the Rowland A. Fabian CWA Trust shall deliver any such records or documents to the United States.

35. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Site to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;

- 4) Inspect and evaluate the restoration activities; and
- 5) Inspect and review any records required to be kept under this Consent Decree and the CWA.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from any person as authorized by law.

#### VI. DISPUTE RESOLUTION

36. Any dispute that arises with respect to the meaning or requirements of this Consent Decree and/or the Rowland A. Fabian CWA Trust shall be, in the first instance, the subject of informal negotiations between the United States and the party affected by the dispute (i.e., Fabian or the Trustee), to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond 30 days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the party affected by the dispute cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 days after the end of the informal negotiations period, the party affected by the dispute files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have 30 days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the party affected by the dispute shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA and/or the Rowland A. Fabian CWA Trust, and

that the movant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA and/or the Rowland A. Fabian CWA Trust.

37. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the 30 day period for informal negotiations. The opposing party shall have 14 days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the opposing party shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA and/or the Rowland A. Fabian CWA Trust, and that the opposing party's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA and/or the Rowland A. Fabian CWA Trust.

38. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Fabian under this Consent Decree, except as provided in Section VIII regarding payment of stipulated penalties.

#### VII. FORCE MAJEURE

39. Fabian shall perform the actions required of Fabian under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Fabian, including, for example, his employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance,

changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a parcel of real estate, or failure to obtain federal, state or local permits.

40. If Fabian believes that a Force Majeure event has affected Fabian's ability to perform any action required under this Consent Decree, Fabian shall notify the United States in writing within 11 calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by Fabian to prevent or minimize the delay and a schedule for the implementation of such measures.

Fabian may also provide to the United States any additional information that he deems appropriate to support his conclusion that a Force Majeure event has affected his ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

41. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event.

42. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VI of this Consent Decree.

43. Fabian shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Fabian; (2) that Fabian could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

#### VIII. STIPULATED PENALTIES

44. After entry of this Consent Decree, if Fabian fails in the absence of a Force Majeure event to timely satisfy any requirement imposed on Fabian as one of Fabian's obligations under the Consent Decree, Fabian shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- |    |   |                    |
|----|---|--------------------|
| A. | For Day 1 up to and including<br>Day 30 of non-compliance | \$1,000.00 per day |
| B. | For Day 31 up to and including<br>60 of non-compliance    | \$2,000.00 per day |
| C. | For Day 61 and beyond<br>of non-compliance                | \$3,000.00 per day |

Such payments shall be made upon demand and instruction by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

45. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant

to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in Section VII shall be resolved upon motion to this Court as provided in Section VI.

46. The filing of a motion requesting that the Court resolve a dispute shall stay Fabian's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Fabian does not prevail on the disputed issue, stipulated penalties shall be paid by Fabian as provided in this Section.

47. To the extent Fabian demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Section VII) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

48. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

49. Fabian shall make any payment of a stipulated penalty in accordance with instructions provided to Fabian by the United States. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Fabian shall provide written notice, at the addresses specified in Section IX of this Decree.

IX. ADDRESSES

50. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Thomas Turner  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd. (mail code: C-14J)  
Chicago, Illinois 60604  
turner.thomas@epamail.epa.gov
- (2) Greg Carlson  
Environmental Scientist  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd. (mail code: WW-16J)  
Chicago, Illinois 60604  
carlson.greg@epamail.epa.gov

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE:

Letitia Grishaw, Chief  
Andrew J. Doyle, Attorney  
Jered J. Lindsay, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
DJ # 90-5-1-1-05741  
andrew.doyle@usdoj.gov  
jered.lindsay@usdoj.gov

C. TO FABIAN:

Patrick A. Mysliwy, Esq.  
Maish & Mysliwy, Attorneys at Law  
53 Muenich Court  
Hammond, Indiana 46320

maishmys@aol.com

D. TO ROWLAND A. FABIAN CWA TRUST:

Stacia L. Yoon, Esq.  
Genetos Retson Yoon & Molina LLP  
8585 Broadway, Suite 480  
Merrillville, IN 46410  
syoon@grymlaw.com

X. COSTS OF SUIT

51. The United States and Fabian shall bear their own costs and attorneys' fees in this action.

XI. PUBLIC COMMENT

52. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Fabian agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Fabian in writing that it no longer supports entry of the Consent Decree.

XII. CONTINUING JURISDICTION OF THE COURT

53. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree or the Rowland A. Fabian CWA Trust consistent with applicable law or to resolve all disputes arising hereunder or under the Rowland A. Fabian CWA Trust as may be necessary or appropriate for construction or execution of this Consent Decree or the Rowland A.

Fabian CWA Trust. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree or the Rowland A. Fabian CWA Trust.

### XIII. MODIFICATION

54. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the other affected party or parties. Where the United States determines the modification to be a material one, the modification does not take effect unless the Court has approved it (and the requirements of the preceding sentence are met).

### XIV. TERMINATION

55. This Consent Decree shall terminate after the United States files a notice stating that the Trustee reported in writing, and the United States concurs, that the property of the Rowland A. Fabian CWA Trust has been distributed in accordance with paragraph 31.

\* \* \*

The Court hereby finds that this Consent Decree is a fair, appropriate, and reasonable settlement of this case, is consistent with the CWA, and is in the public interest.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
RUDY LOZANO, Judge  
United States District Court

FOR THE UNITED STATES:

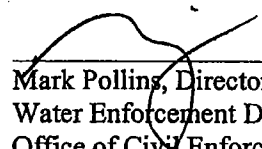
Ronald J. Tenpas  
Assistant Attorney General  
Environment and Natural Resources Division

Dated: \_\_\_\_\_

\_\_\_\_\_  
Andrew J. Doyle, Attorney  
Jered J. Lindsay, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

("For the United States" is continued on the next two pages.)

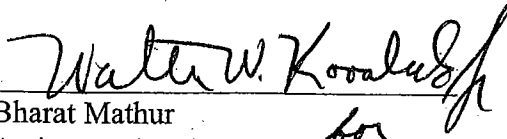
EPA:



\_\_\_\_\_  
Mark Pollins, Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. EPA Headquarters  
Ariel Rios Building (Mail Code: 2243A)  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460


Dated: June 14, 2008

EPA:

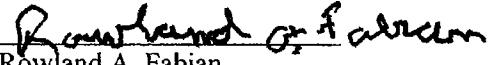
  
Bharat Mathur  
Acting Regional Administrator  
U.S. EPA  
Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

Dated: 6/19/08


FOR FABIAN:

  
John L. Fabian, not individually,  
but as attorney-in-fact for  
Rowland A. Fabian

Dated: 6-15-08

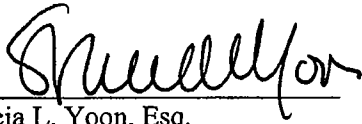
  
Rowland A. Fabian

Dated: 6-15-08

  
Patrick A. Mysliwy, Esq.  
Maish & Mysliwy, Attorneys at Law  
53 Muenich Court  
Hammond, Indiana 46320

Dated: 6-16-2008

FOR ROWLAND A. FABIAN CWA TRUST:

A handwritten signature in cursive script, appearing to read 'Stacy L. Yoon', written over a horizontal line.

Stacia L. Yoon, Esq.  
Genetos Retson Yoon & Molina LLP  
8585 Broadway, Suite 480  
Merrillville, IN 46410

Dated: 6/13/08

## Appendix A to Consent Decree: Legal Description of the Site

(Two pages, not including this cover page)

## Appendix B to Consent Decree: Limited Power of Attorney for Purposes of Litigation

(Four pages, not including this cover page)

**Appendix C to Consent Decree:  
EPA's Restoration Plan for  
Defendant Fabian's Filled Wetland**

(19 pages, not including this cover page)

## **Appendix D to Consent Decree: Parcels of Real Estate To Be Conveyed**

(Six pages, not including this cover page)

## Appendix E to Consent Decree: Block L Yonan Airport

(One page, not including this cover page)